

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Section 302 of )  
the Telecommunications Act of 1996 )

Open Video Systems )

CS Docket No. 96-46

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**RESPONSE TO OPPOSITION TO REQUEST FOR EXTENSION OF TIME**

**I. INTRODUCTION**

On November 1, 1996, Sprint Corporation ("Sprint"), on behalf of its North Carolina subsidiary, Carolina Telephone and Telegraph Company, filed its Request for Extension of Time ("Request") to comply with the Federal Communications Commission's ("Commission") Order of July 23, 1996,<sup>1</sup> in the above-captioned proceeding (hereinafter the "Order"). The Order requires<sup>2</sup>, among other matters, that within ninety days from August 8, 1996, all video dial tone operators must "effect a transition" to one of the four options for providing video programming services set forth under Section 651 of the Communications Act of 1934, as amended by the Telecommunication Act of 1996 (the "1996 Act").<sup>3</sup> As discussed in the Request, Sprint is unable to comply with this requirement and therefore requests a waiver from the Commission. Specifically, Sprint requests an open-ended extension of time to comply with the Commission's

<sup>1</sup> In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, First Order on Reconsideration, CS Docket No. 96-46, adopted July 22, 1996, rel. July 26, 1996.

<sup>2</sup> Id. at para. 9.

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et seq. (the "1996 Act").

Order and proposes to notify the Commission of the progress in completing the transition and request a specific waiver period as more complete information becomes available.

On November 18, 1996, Time Warner Cable ("Time Warner") filed its opposition to Sprint's Request. Time Warner suggests that the requested extension should go no further than April 15, 1997 and that Sprint must be held to its current "video dialtone" obligations as well as the franchise-related obligations. Sprint submits that Time Warner is in error in its characterization of Sprint's Request and its recommended treatment of the video dialtone undertaking by Sprint until such time as the transition is completed.

## **II. OPEN ENDED REQUEST**

As a preliminary matter, although the initial requested extension was open-ended, Sprint made it clear in this request that it would provide updates to the Commission of the progress in completing the transition and will request a specific waiver period as more complete information becomes available.<sup>4</sup> By utilizing this approach, Sprint sought to avoid the administrative burdens to the Commission and the parties involved of making multiple requests to the Commission for extensions based upon incomplete information. Sprint has entered into negotiations with the appropriate governmental entities to obtain the necessary franchises, but is unable at this time to give a precise date as to when those negotiations might be completed. Aside from the potential for repeat requests to this Commission for an extension of time, an additional risk associated with an established time period that is too short is that it compromises Sprint's ability to negotiate comprehensive and balanced franchise agreements. An unreasonably short time constraint may place Sprint at a relative disadvantage compared to the bargaining positions of the local

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<sup>4</sup> Request for an Extension of Time, November 1, 1996, at 4.

governments with whom Sprint is negotiating. Pressure to reach a franchise agreement pursuant to a Commission established time frame might force Sprint to acquiesce in positions it might not have otherwise chosen. The short time frame that Time Warner suggests seems extremely arbitrary in light of the fact that Time Warner is provided a three year window in which to conduct local franchise renewals.<sup>5</sup> Similarly, for other, non-video dialtone based competitors there may be no limit to the amount of time allowed to negotiate a franchise. Should the Commission determine that a specific date must be established, Sprint requests that the period be as long as possible.

Sprint also suggests that the deadline set by the Commission in this proceeding was simply not sufficient given the nature of the activities that need to be accomplished. In its Order, the Commission indicated that its open video system rules were released on June 3, 1996, and that the Commission would release any reconsideration of those rules by August 8, 1996. The Commission concluded that video dialtone providers would possess adequate information regarding their options to make such an election after August 8, 1996. The Commission did not release any reconsideration order on the rules and the initial rules were not amended. Thus, it was not until August 8th that all of the necessary information was available to Sprint to make an election. Although the time frame was adequate to make the initial election, it was clearly not adequate to "effect the transition".

The Commission anticipated this result in its Order where it noted:

We realize that video dialtone operators will need time to evaluate their options under Section 651 and to implement their choice. We therefore will provide videodial tone operators ninety days from the August 8, 1996 in which to effect a transition to one of the four options for providing programming services under Section 651. This will also permit video dialtone subscribers to continue receiving

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<sup>5</sup> See, 47 U.S.C. § 546.

service without disruption. At or before the end of this 90-day period, each currently authorized video dialtone operator must inform the Office of the Secretary of the Commission in writing, with a copy to the Chief of the Cable Services Bureau, which option under Section 651 it has elected. We realize, however, that it may not be possible in all circumstances for a video dialtone operator to complete the transition in ninety days. In those instances, we would consider reasonable extensions of time based on a showing of good cause.<sup>6</sup> (emphasis added)

By letter dated October 4, 1996, Sprint notified the Commission of its intent to select (from the four options set forth under Section 651) the provision of service pursuant to Title VI of the Act. The early estimate for completing the actions required for final presentation and approval of a franchise agreement with the Town is that all necessary actions should be completed by late March or early April, 1997. However, these estimates assume the timely completion of a significant amount of detailed work in preparation for negotiations and complex negotiations prior to approval of an agreement by the Town. Sprint submits that the open-ended request is appropriate under these circumstances. Sprint has and will continue to vigorously pursue all commercially reasonable actions to effectuate the transition as soon as possible.

Should the Commission desire to establish a date certain at this time rather than allow Sprint to request such a date after more information is obtained, as an alternative to the April 15, 1997, date offered by Time Warner, Sprint proposes that that October 12, 1997, be set as such a date. Although not directly related to the issues set forth in the Request, this date corresponds to the termination of the initial grant of authority to Sprint for the trial<sup>7</sup>. At a minimum, this date

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<sup>6</sup> In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, First Order on Reconsideration, CS Docket No. 96-46, adopted July 22, 1996, rel. July 26, 1996, at para. 9.

<sup>7</sup> Order and Authorization, Carolina Telephone and Telegraph Company, W-P-C6999, 10 FCC Rcd 1583 (1994) at 12. This order provided for a two year trial from the date the system was operational. The system was operational on October 12, 1995.

fulfills the original grant of authority for the trial and provides a meaningful opportunity to complete the necessary negotiations for comprehensive and fair franchise agreements rather than the arbitrary date selected by Time Warner.

### **III. IMPOSITION OF VIDEO DIALTONE AND FRANCHISE OBLIGATIONS**

Time Warner suggests that the Commission should impose on Sprint the burdensome and unreasonable obligations of complying with both video dialtone requirements and franchise requirements. In making this suggestion, Time Warner has ignored the clear intent of the 1996 Act. Among other things the 1996 Act repealed the telephone-cable cross-ownership restrictions imposed by the Cable Communications Policy Act of 1984. The 1996 Act also repealed the Commission's rules and policies for video dialtone. Specifically, Section 302(b)(3) of the 1996 Act states as follows:

**TERMINATION OF VIDEO DIALTONE REGULATIONS.** - The Commission's regulations and policies with respect to video dial tone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act. This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission had approved before the date of enactment of this Act.

Clearly, there is no authority for the Commission to continue to impose these rules and policies on Sprint.

Furthermore, there is no practical use for imposing such requirements on Sprint. Since the enactment of the 1996 Act, Sprint has continued to provide non-discriminatory access to video programmers, has not become involved in the selection, packaging and pricing of content, and has limited the trial to the 1000 home area originally approved. Prior to completing the transition, Sprint will continue to operate in this fashion. Sprint has not filed a video dialtone tariff and sees no purpose in doing so at this time with the invalidation of the video dialtone rules. In addition,

because of the limited time and scope of the trial, the minor amount of transport revenue it would generate would likely be more than offset by the cost of preparing and filing the tariff. Sprint did implement and follow cost allocation procedures to comply with the Commission's directives regarding video dialtone. Although the 1996 Act invalidated these requirements, Sprint will continue to track trial expenses in such a way that they can be identified, if necessary.

The franchise related obligations Time Warner seeks to impose are examples of the issues Sprint will be negotiating with the local franchise authorities. The Commission should refrain from imposing such obligations where they are clearly in the domain of the local authorities.


#### **IV. CONCLUSION.**

Sprint respectfully requests an open-ended extension of time to comply with the Commission's Order of July 23, 1996 in the above-captioned docket. Sprint proposes to notify the Commission of the progress in completing the transition and will request a specific waiver period as more complete information becomes available. Should the Commission desire to establish a date certain at this time rather than allow Sprint to request such a date after more information is obtained, as an alternative to the April 15, 1997, date offered by Time Warner, Sprint proposes that October 12, 1997, be set as such a date.

Furthermore, Time Warner's recommendation that the Commission should impose on Sprint the burdensome requirements of complying with both video dialtone requirements and franchise requirements should be denied.

Respectfully submitted,

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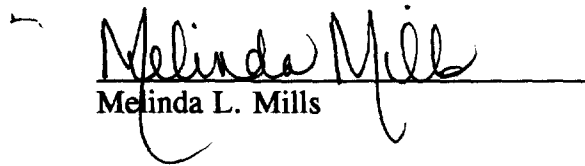
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November 26, 1996

## CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 26<sup>th</sup> day of November, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Response to Opposition to Request for Extension of Time" of Sprint Corporation in the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CC Docket No. 96-46, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

  
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